where the inherent jurisdiction of the Court to prevent its process being abused so as to cause hardship and injustice ought to be exercised in favour of the examinees.

Consider first the staleness of these proceedings; Loh Chuk Poh was declared bankrupt in 1914, he absconded, but Loh Kong Yew was alive up to the year 1920. No application was made by the Official Assignee to examine him all those six years although he was available and could easily have been got at by the receivers in Kuala Lumpur; now for the first time nearly 12 years later application is made to examine persons simply because they are in possession of the property which it is alleged he acquired by fraud, no clear proof being forthcoming that they knew anything at all of the alleged fraud. Then in 1917 the Official Assignee hears all about this fraud and is asked to become a party to an action in which it is set up; he refuses and it is only in 1921 when it is alleged at the Bar that a creditor called Koomarasamy guaranteed his costs that he allowed Action 4 of 1921 to be brought through his agents, in which practically the same fraud as had been set up in 1917 was made the ground for the action. There had been a clear finding that no such fraud had been perpetrated in the judgment of Earnshaw J. in Action of 1917, and the Official Assignee after nearly four years' further inaction submits to judgment going against him and entered no appeal against the judgment. Now fortified once again by a guarantee of costs he allows this summons to be taken out. I have no hesitation in saying that in my opinion it would be doing a grave injustice to these parties if I did not cancel the order for examination made against them. In *Stephenson* v. *Garnett*, L.R. [1898] 1 Q.B. p. 677, where on an interlocutory application to tax costs the County Court Judge had decided that a deed under which a defendant had been released from the judgment and costs had been obtained by misrepresentation and the defendant subsequently brought an action in the High Court for a declaration that he had been released, it was held that as the question raised in the [89] action was [89] identical with that decided by the County Court Judge upon the interlocutory application to tax costs and had been decided by a Court of competent jurisdiction the action ought to be stayed as frivolous and vexatious and an abuse of the process of the Court. All three Judges who sat in the case were of opinion that although the case could not strictly be said to be a *res judicata* yet the County Court Judge having decided the question in a proceeding where he had jurisdiction to determine it, the Court should use its inherent power to prevent the same question being again litigated before it.

There must be some limit to litigation and the examinees are entitled to the protection of the Court from frivolous and vexatious proceedings, which can only have a meaning as laying the foundation of further litigation on matters which have been decided again and again by Courts of competent jurisdiction.

For these reasons I order that my first order for the examination of Loh Kim Swee and Loh Kim Im be rescinded.

The Official Assignee must pay the costs of these proceedings.

Appeal allowed.

Solicitors: *Braddell Bros.; Sisson & Delay.*

Re F. A. HENDRICKS

[(O.C.J. (Gordon-Smith J.) January 3, 1936]
[Malacca Bankruptcy No. 12 of 1934]

Pensions Ordinance (1928), s.20 — Gratuity — Ordinance No. 44 (Bankruptcy), ss.47 and 94.

A gratuity granted by the Governor-in-Council under section 20 of the Pensions Ordinance (1928) to the legal personal representative of an officer in the Government Service who was an undischarged bankrupt is payable to the Official Assignee.

Re R. E. Smith, [1936] M.L.J. 83 (*supra*, p. 65) followed, and *Re Mahomed Ariff*, [1926] S.S.L.R. 166 not followed.

MOTION IN THE BANKRUPTCY.

Taylor (Official Assignee) in person.

Goh Tiow Wan for the respondent.

The facts and arguments are sufficiently set out in the judgment.

Cur. Adv. Vult.

Gordon Smith J.: This was a motion by the Official Assignee for a declaration that the sum of $1,560 being the gratuity grantable by the Governor-in-Council under section 20 of the Pensions Ordinance (1928) to the legal personal representatives of the above-named F. A. Hendricks, a bankrupt, is payable to the Official Assignee of the property of the bankrupt.

On the 11th May, 1934 the said F. A. Hendricks, who was a dresser employed at the Malacca General Hospital, was adjudicated a bankrupt and was an undischarged bankrupt at the date of his death which occurred on the 6th January, 1935.

In accordance with section 20 of the Pensions Ordinance (1928), the Governor-in-Council on the 28th March, 1935 granted a gratuity of $1,560 to his legal representatives this amount being the equivalent of one year's pensionable emoluments.

This sum is claimed by the Official Assignee on behalf of the creditors in the bankruptcy and is also claimed for her own use and benefit absolutely by Nancy Hendricks, a sister of the deceased who is the sole surviving next-of-kin and to whom letters of administration were granted on the 2nd November, 1935, through her attorney, Joseph Pereya.

Section 20 of the Pensions Ordinance (1928) reads:—

> "When an officer holding a pensionable office, who is not serving on probation or agreement dies, while in the service of the Colony, it shall be lawful for the Governor-in-Council to grant to his legal personal representative a gratuity of an amount not exceeding one year's pensionable emoluments."

Section 16 of the same Ordinance which is also relevant reads:—

> "No pension, gratuity or other allowance granted under this Ordinance shall be assignable or transferable or liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatsoever, other than a debt due to the Government."

It might also be noted that by section 4 of the Ordinance, pensions and gratuities are charged on and are paid out of the general revenues of the Colony.

As somewhat similar cases have been brought before the Courts, both local and in England, and some of the decisions thereon appear in some respects to be in conflict it is necessary to consider the matter and these cases in some detail.

The more relevant provisions of the Bankruptcy Ordinance (No. 44) are as follows:—

Section 47 which sets forth what property of the bankrupt is divisible amongst the creditors and includes "all such property as belongs to or is vested in the bankrupt at the commencement of the bankruptcy or is acquired by or devolves on him before his discharge."

Section 94, which reads:—

"If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive and the Court may dispense with the service of the petition upon him."

In this case no question arises as to the attachment or sequestration of a pension or gratuity pay-
[90] able to an officer, during his lifetime [90] and therefore section 17 of the Pensions Ordinance [1] and section 55(3) of the Bankruptcy Ordinance [2] need not be taken into account, as the consideration upon which those provisions are based are different and no question arises as to the maintenance of the bankrupt or his dependants. Nor am I concerned as to whether or not the gratuity should be awarded, which is an accomplished fact by reason of the order of the Governor-in-Council of the 28th March, 1935.

In my view section 20 of the Pensions Ordinance is quite plain and straight forward and means what it says, namely that if the gratuity is awarded it is payable to the legal personal representative of the deceased. If the legislature had intended that it should be paid to the widow, next-of-kin or dependants it would have said so or if it had been intended that such gratuity should be protected in the event of bankruptcy or against the claims of creditors then, no doubt, specific provision would have been made to this effect. Compare section 72(1) and (2), Ordinance No. 36 (Conveyancing and Law of Property) [3] and sections 11 and 17 of Workmen's Compensation Ordinance, 1932 [4].

The question however arises in this case as to who is the legal personal representative? *Prima facie* the expression means the executor or administrator who has proved the will or extracted letters of administration and Miss Hendricks by virtue of having done the latter, claims the gratuity as such legal personal representative. But as stated in *Surman* v. *Wharton*, [1891] 1 Q.B. 491 this view as to who is the legal personal representative is too narrow and is not exclusive and may include persons who on the death of the person spoken of become entitled to the property in question. The Official Assignee also claims to be entitled to the gratuity by reason of the provisions of the Bankruptcy Ordinance and in particular by reason of sections 24(4), 47 and 94. In my view his claim is well founded and even if Miss Hendricks was entitled to receive the gratuity she would do so subject to the obligation to pay the debts of the deceased. But, it is argued, section 16 of the Pensions Ordinance protects this gratuity from any claim being made in respect of it and it is this point that is the main contention which has been the subject of previous decisions and which has to be considered. To deal first with local decisions: *Re R. E. Smith decd.* (*supra*, p. 65).

In this case the question for determination was whether a certain sum of money received by the administratrix of the estate of the deceased from the trustees of the Municipal Provident Fund was subject to the payment of the debts of the deceased. It was contended, for the administratrix, that by reason of the provisions of section 19(2) of Ordinance No. 135 (Municipal) although the money had been received by the officer or his estate, nevertheless it was not liable for the payment of his debts. This case

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1. Pensions Ordinance, 1928, section 17 is as follows:—

"If any officer to whom a pension or other allowance has been granted under this Ordinance is adjudicated a bankrupt or is declared insolvent by judgment of the Court, then such pension or allowance shall forthwith cease.

Provided always that in any case where a pension or allowance ceases by reason of the bankruptcy or insolvency of the pensioner, it shall be lawful for the Secretary of State or, if such pensioner is resident in the Colony or in any Malay State under British Protection, the Governor-in-Council, from time to time during the remainder of such pensioner's life, or during such shorter period or periods, either continuous or discontinuous, as he shall think fit, to cause all or any part of the monies to which such pensioner would have become entitled by way of pension or allowance, had he not become a bankrupt or insolvent to be paid to or applied for the maintenance and personal support or benefit of all or any, to the exclusion of the other or others, of the following persons, namely, such pensioner and any wife, child or children of his, in such proportions and manner as the Secretary of State or the Governor-in-Council as the case may be thinks proper; and such monies shall be paid or applied accordingly."

2. Ordinance No. 44 (Bankruptcy), section 55(3). Where a bankrupt is in the receipt of a salary or income other than as aforesaid or is entitled to any half-pay or pension or compensation granted by the Government, the Court, on the application of the Official Assignee, shall, subject to the provisions of any enactment for the time being regulating the grant and payment of pensions, from time to time make such order as it thinks just for the payment of the salary, income, half-pay, pension or compensation or of any part thereof to the Official Assignee, to be applied by him in such manner as the Court directs.

3. Ordinance No. 36 (Conveyancing and Law of Property), section 72(1):—A policy of assurance effected by any man on his own life and expressed to be for the benefit of his wife or of his children or of his wife and children or any of them, or by any woman on her own life and expressed to be for the benefit of her husband or of her children or of her husband and children or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not so long as any object of the trust remains unperformed form part of the estate of the insured or be subject to his or her debts.

(2) If it is proved that the policy was effected and the premiums paid with intent to defraud the creditor of the insured they shall be entitled to receive out of the moneys payable under the policy a sum equal to the premiums so paid.

4. Workmen's Compensation Ordinance, 1932, section 11:—

Save as provided by this Ordinance no lump sum or half monthly payment payable under this Ordinance shall in any way be capable of being assigned or charged or be liable to attachment or passed to any person other than the workman by operation of law, nor shall any claim be set off against the same.

[91] [91] has not been reported * but I have had the advantage of seeing the filed copy of the Chief Justice's judgment which was, on appeal to the Court of Appeal, confirmed, without comment. Sir Walter Shaw referred to *Jones & Co.* v. *Coventry,* [1909] 2 K.B. 1029 and *Re Huggins,* 21 Ch. D. 85 and stated, *inter alia* :—

"In effect the argument must amount to this, that the property of the officer during his lifetime and his estate after his death is free from liability for his debts up to the amount received from the fund. This is a somewhat startling proposition and would amount to an infringement of the ordinary rights of creditors. Such a construction ought not to be deduced from the wording of the Ordinance unless the wording is unambiguous to that effect. In my opinion it is not. To read the section in the manner suggested it is necessary to read the words 'no payments' in the section as meaning 'no sums of money received by an officer or by his estate' and even if one so read it it would be useless for the purpose that it is contended that the section is intended to effect and would indeed be meaningless because a creditor does not, when he takes out execution, levy on any particular sum of money for a debt but levies against the property of the debtor or his estate generally.

The 'payments or other allowances' which are not to be assigned or levied upon under the Ordinance are in my opinion the amounts the officer or his estate is entitled to receive from the trustees of the Provident Fund up to the time the moneys are paid over to the officer or his estate and all that the Ordinance can properly be construed as effecting is the same as the English provisions, construed in the cases I have referred to, namely to prevent the money to which the officer or his estate is entitled being assigned by him or attached or levied upon before it comes into his possession."

The same section, 19(2) of the Municipal Ordinance has been the subject of recent decisions of this Court, namely, *Re H. Daniel,* [1935] S.S.L.R. 81; [1935] M.L.J. 50 and *Re M. Sandrasagaram,* [1935] S.S.L.R. 249; [1935] M.L.J. 247.

In the former case, Whitley J. held that the Official Assignee could claim the contributions side of the Municipal Provident Fund and that such part of the fund, on the member's bankruptcy, vested in the Official Assignee upon such member ceasing to be an employee of the Municipal Commissioners. Whitley J. expressly refrained from deciding what the position was as regards the donations side of the Municipal Provident Fund. In the later case Terrell J. held as regards the Singapore Municipal Provident Fund that both sides of the Provident Fund, namely the contributions side and the donations side, vest in the Official Assignee upon the bankruptcy of a member of the fund and that any money added to the fund since the date of the bankruptcy is after acquired property in the nature of personal earnings. In both cases the previous decision of Brown J. in *Re Mahomed Ariff,* [1926] S.S.L.R. 166 was referred to and although Whitley J.'s remarks on this case are in the nature of *obiter dicta,* yet Terrell J. although not expressly dissenting from the decision in *Mahomed Ariff* preferred to follow the decision of Whitley J. in construing the same section under the same Ordinance whereas the section which Brown J. was called upon to construe was section 8 of the Pensions (Gratuities) Ordinance, 1926 in somewhat similar terms to the existing section 16 of the Pensions Ordinance, 1928.

In neither case was the attention of the Court drawn to the case of *re Smith, supra,* and the decision of Shaw C.J. confirmed by the Court of Appeal, to which I have referred earlier. It might also be noted that although these two cases were decisions upon the same section of the Municipal Ordinance, namely, section 19(2) yet the rules made under that Ordinance dealing respectively with the Penang Municipal Provident Fund and the Singapore Municipal Provident Fund are not identical in all respects. Terrell J. in *Sandrasagaram's* case considered fully the case of *Re Mahomed Ariff* and in particular the meaning of the words "assignable," "transferable," "attached," "sequestered" and "levied upon" which are contained in section 19(2) of the Municipal Ordinance and which are also contained in section 16 of the Pensions Ordinance, 1928 and came to the conclusion that these words were not sufficiently appropriate to preclude the vesting of property in the Official Assignee, as apparently held by Brown J. in the case of *Mahomed Ariff.* In any case however it seems clear that if Brown J. had been aware of the earlier authority of *re Smith* which was binding on him, his decision would have been different to what it was. The facts also were slightly different to the present case, as in *Mahomed Ariff's* case the directions of the Court were sought under section 55(3) of the Bankruptcy Ordinance in respect of the gratuity granted to a pensioner who had commuted 1/4th of his pension whereas in the present case it is in respect of a gratuity granted to the estate of a deceased official and matters which may require consideration under section 55(3) do not arise in the present case.

Counsel for Miss Hendricks apart from relying mainly on *Mahomed Ariff's* case also referred to the case of *re K. Samykanoo,* [1927] S.S.L.R. [92] 34. [92] In this case also the application was made under section 55 of the Bankruptcy Ordinance in respect of a bonus awarded under regulations made by the Singapore Harbour Board and it was held that the Board was not a Government Department nor was the bankrupt in the service of the Crown within the meaning of section 55(1) of the Bankruptcy Ordinance and further that the bonus was not salary or income within the meaning of sub-section 3 of that Ordinance as it was in the nature of a voluntary or discretionary payment. This decision followed the decisions in *re Wicks,* 17 Ch. D. 70 approved in *re Webber,* 18 Q.B.D. 111. It was urged before me in support of this argument that, similarly this gratuity was a voluntary or discretionary payment in view of section 5 of the Pensions Ordinance which enacts that the payment of pensions or gratuities is not a matter of right.

In the case of *re Wicks, supra,* the bankrupt was a retired publican and a purely voluntary allowance was made to him by a friend for his maintenance. It was held that this allowance was neither salary nor income to which the bankrupt was legally or equitably entitled and was a mere voluntary payment and did not vest in the trustees in the bankruptcy.

In re Webber, supra, was the case of a compassionate allowance made to a retired Indian army officer and was neither in the nature of half pay nor pension nor was it paid out of any special or appropriated fund. It was held that the allowance was a mere bounty or gift and did not come within section 53 of the Bankruptcy Act.

* See now p. 65, *supra.*

The case of *re Huggins,* 21 Ch. D. 85 decides that pension of a retired judge of a Crown Colony, granted by the Secretary of State for the Colonies and voted annually, is property which vests in the trustee in Bankruptcy and is income of the bankrupt and consequently is available for the benefit of the creditors, notwithstanding that the pension could not be sued for or even made the subject of a petition of right because it was granted out of the voluntary bounty of the Crown.

Similarly in *re Hawkins,* [1926] Ch. 428. In this case the facts of which are analogous to the present case it was held that a death gratuity by the Board of Education under discretionary powers conferred by section 3 of the School Teachers Superannuation Act, 1918, to the legal personal representative of a teacher who died intestate, will be treated as forming part of the estate of the deceased and be primarily applicable in payment of the deceased's debts and ought not to be held upon trust for his next-of-kin.

In the case of *Hollinshed* v. *Haselton,* [1916] 1 A.C. 428 the House of Lords held that the allowance of £400 a year to the members of Parliament was a salary or income within the meaning of section 51 of the Bankruptcy Act and therefore available for creditors. In this case all the leading authorities bearing on the question in point were reviewed and purely voluntary allowances as in the case of *re Wicks, supra,* were distinguished from the pay and pensions of officers serving under the Crown.

I have dealt with this matter at some length for the reason that there appears to have been some conflict, locally, on the question, mainly attributable to the fact that the judgment of Shaw C.J. confirmed as it was by the Court of Appeal has not been reported* and apparently was lost sight of and not referred to in later cases. I am bound by that decision and it seems to me obvious that section 16 of the Pensions Ordinance, 1928 (and similarly 19(2) of the Municipal Ordinance) has been included in order to avoid the embarrassment that would be caused to the Government and Municipalities if pensions, gratuities and other allowances could be assigned or transferred before payment or that sums due as such could be attached, sequestered or levied before payment but I see no reason, as Shaw C.J. says why, after payment has been made to the recipient, such amounts should be protected either during lifetime, or after death, from being liable and being made available for debts incurred. To take an example, suppose a civil servant who has exercised the option to commute 1/4th of his pension retired and received £2,500 as the commuted portion of his pension which he invests in gilt edged securities. Is this amount protected against his creditors in the event of his bankruptcy? And even if he is made bankrupt during his service and is retiring in consequence thereof, and the gratuity is awarded, can it be said that such is not available for distribution amongst his creditors?

In my opinion section 16 of the Pensions Ordinance does not have that effect and was never intended to have such effect.

* See now p. 65, *supra.*

The Official Assignee will therefore have the declaration sought and his costs and the costs of Miss Hendricks will be paid out of the gratuity when received by him.

Order accordingly.

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[93] F.M.S. REPORTS [93]

RAUB RUBBER ESTATES LTD. v. CONTROLLER OF LABOUR

[A.C.J. (Cussen J.) November 28, 1935]
[Pahang Civil Appeal No. 1 of 1935]

Workmen's Compensation Enactment, 1929, s.3(i) — "Arising out of and in the course of the employment" — Drinking acid by mistake for quinine.

K. was a coolie employed on the appellant's estate. On the 2nd September, 1934, *K.* was ill with fever and went to the estate dispensary to obtain quinine. The dispensary, which consisted of a locked medicine cupboard in the factory, was in charge of the estate conductor, who, for convenience, used to employ an estate coolie to issue out medicine. It was the practice on the estate for coolies, when they required quinine for fever, to come to the factory, and be supplied by this coolie.

When *K.* went to the dispensary to obtain quinine there were bottles containing formic acid next to the bottle containing quinine in the medicine cupboard. By mistake *K.* was given a dose of formic acid instead of quinine and died in consequence thereof.

Held: that the accident arose out of and in the course of the workman's employment. At the time of the accident the workman was on his employer's premises and was doing something which he had a right to do.

St. Helen's Colliery Co., Ltd. v. *Hewitson,* [1924] A.C. 59 distinguished.

Storr for the appellant.

Not an appeal on question of facts; an appeal on a conclusion reached on a wrong view of the law. *Lancashire and Yorkshire Railway* v. *Highley,* [1917] A.C. 352, 369. *Willan* admits this.

First ground of appeal.

McNicholas v. *Dawson,* [1899] 1 Q.B. 773; *Hawkins* v. *Powell,* [1911] 1 K.B. 988, 995.

Second and third grounds of appeal.

† Deceased coolie was ill and went to get medicine. He was under no obligation to his employers to get medicine, so does not come within the test laid down in *Lancashire and Yorkshire Railway* v. *Highley, supra,* which is, "Was it part of the deceased person's employment to hazard, to suffer, or to do that which caused his death?" Deceased, even if under an obligation, by taking the medicine from a coolie instead of from the conductor was adding an additional risk. Deceased called Subha Rao out of the packing room. *Lancashire and Yorkshire Railway* v. *Highley, supra.* Facts in this case somewhat parallel to those in *St. Helen's Colliery Co. Ltd.* v. *Hewitson, supra.* The Court will follow the test laid down by the House of Lords in that case.

Finding of fact by the Commissioner that the taking of the medicine was voluntary and workman under no obligation or duty to take medicine from the estate dispensary. No evidence to support the finding that Subha Rao was instructed by Ranganaya-